

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, MARCH 14, 2018**

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Motion carried, 7-0.	
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**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 14, 2018
Department of Public Services
851 S. Eton Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 14, 2018. Chairman Scott Clein convened the meeting at 7:32 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Nasseen Ramin, Daniel Share; Student Representative Ellie McElroy (left at 9:07 p.m.)

Absent: Board Members Robin Boyle, Gillian Lazar; Student Representatives Madison Dominato, Sam Fogel

Administration: Matthew Baka, Sr. Planner
Brooks Cowan, Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

03-32-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF FEBRUARY 28, 2018

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of February 28, 2018 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Clein, Jeffares, Ramin, Whipple-Boyce

Abstain: Share

Nays: None

Absent: Boyle, Lazar

03-33-18

CHAIRPERSON'S COMMENTS (none)

03-34-18

APPROVAL OF THE AGENDA (no change)

03-35-18

PUBLIC HEARING (continued from February 28, 2018)

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

TO AMEND ARTICLE 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USE PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

The public hearing opened at 7:34 p.m.

Ms. Ecker recalled that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners.

At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, and determine if amendments should be made to require all applicants to include details of adjacent properties on their site plans.

Accordingly, on January 10, 2018, the Planning Board discussed the proposed draft ordinance language to consider amending the submittal requirements for site plan review and SLUP review to require all applicants to include details of adjacent properties on their site plans.

On January 27, 2018 at the Long Range Planning meeting this issue was also discussed. Commissioner Nickita commented that he did not believe that an aerial photo would be sufficient to meet the provision of adjacent property details.

On February 28, 2018, the Planning Board conducted a public hearing on the proposed ordinance amendments to Article 7, section 7.26 and section 7.34 to require all property lines, buildings and structures on adjacent properties within 200 ft. of a subject site to be marked on the site plan drawings submitted. After discussion of the comments made at the Long Range Planning meeting, the Planning Board continued the public hearing to March 14, 2018 and directed staff to add an aerial photo as a site plan submittal requirement in addition to a plan providing details on adjacent properties.

Draft ordinance language containing the recommended changes was considered by the Planning Board.

Mr. Share noted that the last line of the amendment to ARTICLE 7, SECTION 7.26, APPLICATION should read "site's property lines" rather than "sites' property lines." Mr. Jeffares added "current" in front of "aerial photos" in the third line.

At 7:37 p.m. no one from the public wished to comment on the changes.

Motion by Mr. Jeffares

Seconded by Mr. Williams to recommend approval to the City Commission of amendments to Article 7, section 7.26 and section 7.34 to require current aerial photos and to require that all property lines, buildings and structures on adjacent properties within 200 ft. of a subject site be marked on the site plan drawings submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Williams, Clein, Koseck, Ramin, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Lazar

There were no further comments from the public and the public hearing closed at 7:38 p.m.

03-36-18

OLD BUSINESS (continued from February 28, 2018)

SPECIAL LAND USE PERMIT ("SLUP") AND FINAL SITE PLAN AND DESIGN REVIEW

1. 1669 W. Maple Rd. (First Presbyterian Church)

Request for approval of a Revised Final Site Plan and Design to permit a commercial catering business to operate in the existing church kitchen

Ms. Ecker explained First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. It is zoned R-1, Single-Family Residential and has a valid SLUP which was originally granted on May 13, 1991. The church is proposing to lease Knox Kitchen in the lower level of the church to Canape Cart for the purpose of producing meals to be served off site. As a result of this change, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

On February 28, 2018, the Planning Board expressed support for the proposed kitchen use, but voted to postpone the review until March 14, 2018, pending a formal interpretation by the Building Official and City Attorney that the proposed use of the kitchen by a catering team was an accessory use customarily incidental to the Church. Accordingly, the Building Official, City Attorney and Planning Director met to discuss the proposed use of the church kitchen. Accordingly, a letter from Beier Howlett has been received stating that the proposed rental of the church kitchen to an outside group is an accessory use customarily incidental to the church. It is no different than any other fund raising activities which are permissible under the Birmingham Zoning Ordinance.

Motion by Mr. Williams

Seconded by Mr. Share to accept and file the letter from Beier Howlett dated March 13, 2018 dealing with commercial catering use of church kitchens.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Whipple-Boyce, Clein, Jeffares, Koseck, Ramin, Williams

Nays: None

Absent: Boyle, Lazar

Design Review

Knox Kitchen is located in the lower level of the church on the southeast side of the building, facing the rear parking lot. The existing building will not be altered in any way, nor any new signage placed upon the building or the grounds.

Ms. Kathleen O'Neal, co-owner of Canape Cart came forward to speak. Ms. O'Neal explained they have rented the Presbyterian Church in Ferndale for 25 years but now the building is being sold. Currently most of the parties they cater do not exceed 200 people. Their only outside equipment is one van that is used for deliveries. At the most there are four to five people preparing food.

The chairman called for comments from the public at 7:45 p.m.

Mr. David Laddy, 230 Pleasant, pointed out that the long-term Lease between the church and Canape Cart constitutes something different than a bazaar or a rummage sale. It is more commercial than it is community oriented. The R-1 Zoning District is primarily set up for Single-Family Residential. Also there are a series of Special Land Uses which include a church. The City Attorney referred to accessory permitted uses. The Ordinance defines an accessory use in section 9.18 as a subordinate use that is customarily incidental to the principal use, used on the same lot. The church is not a permitted principal use in the R-1 District; it is a Special Land Use. Therefore, the accessory permitted uses refer only back to the permitted uses.

Consequently, Mr. Laddy did not think the mechanics of the Zoning Ordinance allow the Planning Board to do this. Additionally, the Ordinance says if there is some doubt about whether or not a use is accessory to a permitted use it should be referred to the Board of Zoning Appeals for consideration.

For all of those reasons he asked the board to recommend denial of the Special Land Use.

Ms. Ecker noted she called the City Attorney and explained Mr. Laddy's position. She asked him if that changed anything with regard to his legal opinion and he responded that it did not.

Mr. Share opined the fact the board could do this with a SLUP doesn't mean they should do it. He is having trouble supporting a commercial use like this in a Residential District. It is significantly different than the typical things that religious institutions do within house to raise money periodically. So he doesn't think it is an appropriate use and he can't support granting a SLUP for a commercial kitchen to serve outside customers in a Residential Zone.

Ms. Whipple-Boyce stated she was not comfortable with the proposal either.

Mr. Jeffares expressed his opinion that this feels like a way around getting a commercial establishment into a residential neighborhood. It could open the door to businesses that the board would like a lot less than a caterer. It may be a slippery slope that the board has to be really careful on. Chairman Clein expressed those same concerns.

Mr. Williams said the board would have to spend a fair amount of time detailing the restrictions on any kind of SLUP to prevent an escalation of the activity over a period of time. He was not prepared to start drafting restrictive language this evening. Further, he agreed there is virtually no church involvement in this activity, other than the rental income. Going forward, this could set a bad precedent. So, he agreed with Mr. Share.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce that the Planning Board recommend that the City Commission deny the SLUP amendment for 1669 W. Maple Rd., First Presbyterian Church, because the proposed commercial use is inappropriate in this Residential District.

Chairman Clein took discussion to the public one more time at 8 p.m.

Mr. James Goss, Business Manager for the church, said they would be turning the rent that they would be receiving and putting it back into the community.

Mr. Williams suggested it would be relevant to add a review of topics under Church Activities to the board's Action List.

Chairman Clein said he has concerns related to commercial uses getting inside of Residential R-1 and R-2 Zones. This is not a reflection on the applicant so much as it is a situation of the board trying to understand and control the parameters between the two very different uses of single-family and commercial.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Whipple-Boyce, Clein, Jeffares, Koseck, Ramin, Williams

Absent: Boyle, Lazar

03-37-17

STUDY SESSION

1. Planning Board Action List

Ms. Ecker explained the Action List is attached as part of the Planning Division's annual report to the City Commission. The Action List is pretty much as it was, except that item 6 - Church/Religious Institutions, and item 7 - Amend cost of parking space to allow additional building height in the Triangle District, have been added.

Ms. Whipple-Boyce suggested guidelines on how the board might review municipal projects might be considered for future study.

It was discussed that item 6 - Church/Religious Institutions, could be bumped up in front of item 5 - Shared Parking.

Motion by Mr. Williams

Seconded by Mr. Koseck to accept the Action List, plus forward it to the City Commission along with an item for consideration which is the review process for municipal projects that would otherwise qualify for Site Plan Review if they were private projects.

Chairman Clein asked for public comments at 8:15 p.m.

Mr. David Laddy commented that some communities have chosen to pass a resolution that says they have chosen not to opt in to regulate any of the marijuana facilities. Also some communities are using municipal civil infractions to enforce Zoning Ordinance and Nuisance issues. It avoids the Circuit Court trip and gives pretty good results fairly quickly and fairly cheaply.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Clein, Jeffares, Ramin, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Lazar

03-38-18

2. Retail Discussion

Mr. Williams thought it was most helpful that Mr. Cowan's report start with looking at things by geographic area.

Mr. Cowan offered an overview of what he did and what the findings were. The Planning Dept. was directed by the City Commission/City Manager to evaluate the current geographic boundary of the Redline Retail District, to evaluate current properties that were not built to support first-floor retail uses, and to evaluate prohibition of desks, work stations, and office related amenities placed within the first 20 ft. of depth of window frontage, which wasn't necessarily addressed in this report.

To start off, he divided the Redline Retail Boundary into six sections.

- The Redline Retail District has 278 storefronts that predominantly consist of retail goods stores. This category makes up approximately 38% of the total businesses in the Redline Retail District.
- The Maple Rd. section has the highest percentage of retail goods which occupy 67% of the storefronts. Sections 1 and 3 along Old Woodward Ave. have the next highest retail goods percentages of 37% to 39%.
- Sections 5 and 6 are secondary streets to the downtown core. They have a higher percentage and total amount of retail services than Sections 1, 2, and 3.
- Section 3 has a higher instance of office and medical use on the first floor in comparison to the rest of the Redline Retail District. Section 3 also has a larger number of buildings that are less suitable for retail than other sections.
- The City of Birmingham is anticipating four new buildings to be constructed in the Redline Retail District in the near future. A total of 20,984 additional sq. ft. of first floor commercial space will be provided with the construction of these buildings.

- The average vacancy rates for the six sections in the Redline Retail District is 6.47% ranging from 0% in Sections 3 and 6 to 14.0% in Section 1. However, six of the eight spaces in Section 1 have window signage indicating that a new tenant intends to move in. If these spaces become occupied, Section 1's vacancy rate would drop from 14.04% to about 4%.
- Buildings deemed less suitable for retail are predominantly located on N. Old Woodward Ave. in Section 3, and on Brown St. in Section 5.

It was thought that the asking retail prices in similar communities as well as in Somerset Mall, just for comparison purposes, would be a good question to ask the retail consultants. Mr. Williams asked to have pedestrian counts if they are historically available. That is so important in terms of retail. Ms. Ecker confirmed they do have some of that data. Additionally she went to the City Commission to try to get permission to do bicycle and pedestrian counts at eleven or twelve intersections throughout the City, most of them Downtown. The Commission approved the counts starting in September of this year and in May of next year.

In response to Mr. Jeffares, Mr. Cowan said he could provide maps of the Parking Assessment District and metered parking.

Mr. Koseck wondered who is using the parking and where they are coming from. Ms. Ecker stated the Birmingham Shopping District ("BSD") has some of that data where they have interviewed shoppers on the street and asked them where they came from. Chairman Clein added that any recent data the BSD has collected would be appreciated.

Mr. Share said it would be helpful to understand what outreach the BSD has done over the last couple of years to recruit merchants and what reaction they have gotten, positive and negative, segmented by these sections, if possible. To the extent that they got feedback on asking rates, it would be useful to understand why a merchant did not come to Birmingham. That relates to the qualifying point as to the general demand for retail, perceived or otherwise.

Mr. Koseck asked how the typical rent for professional office compares to retail, and compares to medical office. Chairman Clein noted the board is not trying to figure out a retention strategy or an attraction strategy; they are trying to figure out appropriate land uses, but grounded in reality.

Mr. Jeffares noted that he talked to two businesses recently and asked why they were moving. Some said "parking." Conducting exit interviews may determine the reason why people in certain areas are leaving.

Ms. Whipple-Boyce wanted to know a little more about how an exit interview would be conducted before going ahead with that recommendation. Also, she made the point that garden level spaces may not be conducive to true retail in certain situations.

It was agreed that the board must figure out as things turn over, where they want them to be in the future related to the changes that are going to be taking place over the next five years.

Chairman Clein thought it would be interesting to know if the BSD has developed an area that they see as prime, versus a secondary. Any sort of strategy they have would be helpful for this board as well as any recent market studies.

To summarize, Ms. Ecker listed what the Planning Board would like from the BSD:

- Where are the shoppers coming from;

- What is their outreach strategy to recruit retailers and what is the response they are receiving from the retailers;
- Asking prices in Downtown - Is there a lack of demand or is the actual asking price scaring people away;
- Exit interview information and their market strategy - prime versus secondary area;
- Any updates on their market studies.

Chairman Clein said he would be more comfortable with their opinions of the data rather than asking Mr. Cowan to go through all of the asking rates.

Ms. Whipple-Boyce said a nice compromise would be to give property owners an option to do something differently in their space if they can legally have a portion of the back as an office use and still maintain their other two floors of office. Then the front could be redefined clearly as retail and the back can even have the ability to activate the alleys if the office use is accessed through the back. She was hopeful that could come about a little sooner than later.

Chairman Clein asked to have any implications from the Multi-Modal Plan related to pedestrian activity.

At 9:15 p.m. the Chairman asked for public comments.

Mr. Scott Aikens thought the report was really interesting and nicely done. They do the leasing for the Village of Rochester Hills. He emphasized it is really complicated with the tons of changes that are going on and it is a deal maker's business to fill in the vacancies.

It was agreed to continue this study session to April 11, 2018.

03-39-18

3. Bistro Regulations

Background: Mr. Baka advised that recently there has been discussion between the City Commission and the Planning Board that perhaps there should be a re-examination of the bistro requirements which already began last year with several study sessions.

Issue: As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- District Requirements – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

- Incentivizing Seating Capacity Tiers – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, green space, etc.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of bistro regulations was discussed at length. There was consensus that a review of the requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Board held several study sessions on this matter and potential revisions and additions to the bistro standards were discussed. Draft language was created to provide options that would eliminate the ability to utilize enclosures year-round, and not to limit the number of outdoor dining seats or require additional parking for those seating areas. There was discussion on whether or not the 65 seat limit should be revised, or whether rooftop dining should be encouraged and what an acceptable railing height is for platform decks. It was suggested that perhaps the Triangle District and Rail District could establish different standards for maximum seating. New draft language has been presented that expands interior seating for bistros in the Triangle and Rail Districts to 85 seats with 15 at the bar, while interior seating for the Downtown District remains at 65. Current rooftop dining standards were deemed acceptable, but the board wished to see railings on platform decks limited to 42 in. in height.

On January 10, 2018 the Planning Board reviewed the latest draft ordinance language for the proposed bistro regulation changes. The board requested that the language regarding on-street platforms be adjusted so that the reference to enclosing them is eliminated. Also, eliminate permanent enclosures facilitating year-round dining outdoors. Lastly, railings on platform decks may not exceed 42 in. in height in order to create an open atmosphere where the dining adds vitality to the streetscape. Board members wanted to see the final draft language prior to setting a public hearing.

It was agreed the word "permanent" in front of "enclosures" should be eliminated.

Discussion confirmed that rooftop dining is allowable under SLUPs on a case-by-case basis. Outdoor dining on the street is excluded from the rooftop number of seats.

Motion by Mr. Williams

Seconded by Mr. Koseck to set a public hearing for April 11, 2018 to consider the proposed ordinance amendment.

There were no comments from the public at 9:18 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Clein, Jeffares, Ramin, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Lazar

03-40-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Ms. Ecker passed around a memo from the City Manager which contains direction resulting from discussion that took place at the last City Commission meeting regarding the Shell Gas Station SLUP. The matter got sent back to the Planning Board. The Commissioners were concerned that the sidewalk around the bathroom wasn't clearly shown on the plans and finalized as to what it would look like. They want to have all of the details resolved by this board so they can see them specifically on the plans.

Mr. Williams noted this puts the burden on the applicant to complete the plans as opposed to putting it on the staff or on this board. Ms. Whipple-Boyce thought that administratively something could be approved administratively if there weren't multiple ways to accomplish it. If there are multiple ways to accomplish something, her impression is that is when the Commission wants this board to look into it further.

Ms. Ecker continued along those lines that the Commission did ask that the Shell SLUP come back to the Planning Board as soon as possible. It will have to be re-noticed and if the board is willing to hear it on April 11, 2018, a motion is needed to suspend the Rules of Procedure to allow a site plan to be heard.

Motion by Mr. Share

Seconded by Mr. Koseck to suspend the Rules of Procedure to allow reconsideration of Shell Gas Station SLUP on April 11, 2018.

There were no comments from the public at 9:25 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Koseck, Clein, Jeffares, Ramin, Whipple-Boyce, Williams

Nays: None

Absent: Boyle, Lazar

b. Administrative Approval Requests

- 300 Hamilton Row - Changing new platform material to wood; changing railing to steel slat.
- 420 E. Frank St., The Bristol - Approval of changes to plan from FSP reviewed plan as attached memo dated 11-16-17.
- 748/750 Forest, 750 Forest - Exterior design changes.
- Mr. Roman Bonislowski, Ron & Roman Architects, passed around copies of proposed changes for Social. There are a number of interior changes, but no relocation of anything. The idea is to re-invigorate the restaurant after seven years. They propose a new paint job on the building along with the introduction of an art component, The big move it to re-address rooftop dining from a visual and an operational standpoint. Polycarbonate sky lighting type material will provide weather cover. A wood trellis and

retractable canvas flap awnings will offer shade in the space. The seating capacity will not exceed 35.

In response to Ms. Whipple-Boyce, Ms. Ecker noted that the Eisenglass on the first floor is grandfathered in.

It was generally agreed that this is a wonderful proposal but it contains a lot of information that wasn't in the packets. Therefore it was decided that Mr. Bonislowski should provide their original submittal from 12-29-11, along with their current proposal, and come back before the Planning Board and City Commission for a SLUP amendment.

c. Draft Agenda for the next Regular Planning Board Meeting of March 28, 2018

- 260 N. Old Woodward Ave. - SLUP and Final Site Plan Review for a new restaurant called the Morrie;
- 298 S. Old Woodward Ave., The Daxton Hotel - revised exterior materials;
- 857 Redding - Request for approval of addition and new detached garage;
- 298 S. Old Woodward Ave. - Zoning Ordinance Amendment Request to allow Liquor Licenses for theaters and hotels.

d. Other Business (none)

03-41-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

Additional items from tonight's meeting (none)

03-42-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:47 p.m.

Jana L. Ecker
Planning Director